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CHARLES ELMORE CRO
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IN THE

Supreme Court of the United States

OCTOBER TERM, A. D. 1936.

No. 271

IN THE MATTER OF 620 CHURCH STREET BUILDING CORPORATION, A CORPORATION, DEBTOR UNDER SECTION 77B OF THE BANKRUPTCY ACT.

620 CHURCH STREET BUILDING CORPORATION, IRENE K. GOODMAN, G. WALLER, M. LONG, A. W. KIBBY, EMIL ROSENTHAL AND B. K. GOODMAN,
Petitioners,

vs.

WARNER G. BAIRD, TRUSTEE OF DEBTOR, CHESTER R. DAVIS, MURRAY WOLBACH AND JAMES B. McCAHEY, AS MEMBERS OF BONDHOLDERS COMMITTEE FOR THE HOLDERS OF FIRST MORTGAGE BONDS, LOUIS M. QUITMAN AND EDGAR N. GREENEBAUM, AS TRUSTEES UNDER FIRST MORTGAGE, WILLIAM L. O'CONNELL, AS RECEIVER OF CENTRAL REPUBLIC TRUST COMPANY, CLARA ABT, LUCILLE ABT, EDWARD SCHOEN AND ALICE G. HIRSH,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

BRIEF OF CHESTER R. DAVIS, MURRAY WOLBACH AND JAMES B. McCAHEY, AS MEMBERS OF BONDHOLDERS COMMITTEE FOR THE HOLDERS OF FIRST MORTGAGE BONDS, AS RESPONDENTS.

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ruptcy proceedings, and proceeded to classify the claims of the Debtor corporation.

4. That the holders of the second and third mortgage notes voluntarily appeared in the District Court proceedings and filed their claims under their mortgage notes, which claims were allowed for the purpose of permitting them representation in the proceedings.

5. That the Debtor and the holders of the second and third mortgage notes actively participated in the proceedings thereafter.

6. That the court heard voluminious evidence on all phases of the situation, and made a finding that the property of the Debtor had a market value of $245,025, and that there was no equity in the estate of the Debtor over and above the $445,500 value of the First Mortgage Bonds, and that the Debtor is insolvent. Notwithstanding the unsupported statement of the argument of petitioner as to what the court found, and upon what evidence the finding was predicated, it is assumed that the finding in the District Court itself, is held conclusive of that question.

7. That the court accordingly approved a plan of reorganization.

It should be stated that the allegations of petitioner's brief as to what that plan is, are entirely unsupported by the record before this court, and are also unsupported by the statement of facts in the petition. It must, therefore, be assumed that the plan was fair, just and equitable, in view of the many and peculiar circumstances of the case which have been omitted from the transcript of the record brought before this court.

8. That the Debtor and the second and third mortgage note holders objected to the plan and actively participated in the proceedings in the District Court relative thereto by negotiation and litigation.

9. That the order of the District Court made an appraisal of *all* the property of the debtor, and also appraised the value of *all* classes of claims; and further as a matter of fact on that appraisal found that the claims of the noteholders of the second and third mortgage, and the claims of the Debtor corporation and its stockholders against the estate, were of *no* value, and that accordingly they were not parties interested in the reorganization, and their specific consent to the plan itself was unnecessary.

Petitioners attack the order of the District Court confirming the plan of reorganization, on two basic grounds:

1. The court made an appraisal of the value of all the property of Debtor, and also of the value of the claims of the junior lienors and of the Debtor and its stockholders. Upon that appraisal, the court found that the value of the claims of those having priority over all mortgage liens, plus the claims of the First Mortgage Bondholders, was greater by far than the value of all the property involved, and that the Debtor was hopelessly insolvent.

Wherefore, the court found that the claims of the junior lienors and of the Debtor and its stockholders were of *no* value, that no distribution of assets should be made among them, and that their consent to the confirmation of the plan was unnecessary.

The petitioners say in criticism of this action, (a) that the second and third mortgage bondholders should have been given something in the distribution of assets, and (b) that their consent was necessary under the law to the confirmation of the plan.

2. The petitioners complain that wholly aside from the right to receive a monetary distribution from the assets, the second and third mortgage lien holders, and the Debtor itself, under Illinois law, had certain rights (a) the right to have the estate of the Debtor sold at a sale; (b) the

right to bid at such sale; and (c) the right of the Debtor to redeem from such sale within twelve months, and the right of the lienors thereafter within three months likewise to redeem.

The petitioners say that these rights were destroyed by the order confirming the plan of reorganization, and that they were not compensated for them, and they, therefore, invoke the protection of the Fifth Amendment.

ARGUMENT.

I.

THE APPROVAL OF THE PLAN OF REORGANIZATION BY THE DISTRICT COURT WITHOUT THE CONSENT OF THE HOLDERS OF TWO-THIRDS IN AMOUNT OF THE SEVERAL JUNIOR INDEBTEDNESS AND WITHOUT COMPENSATION TO THEM IS AUTHORIZED BY SECTION 77B OF THE BANKRUPTCY ACT, AS AMENDED, IF THE COURT FINDS THAT THE CLAIMS OF THE JUNIOR INDEBTEDNESS ARE VALUELESS.

A.

Section 77B, Subdivision (b) (5), provides that adequate protection may be given to a class of creditors of which less than two-thirds consent to a plan of reorganization for the realization by them of the *value* of their interests, claims, or liens,

> "(c) by appraisal and payment either in cash of the *value* either of such interests, claims, or liens, or, at the objecting creditors' election, of the securities allotted to such interests, claims, or liens under the plan, if any, shall be so allotted."

This method of determining the value of the claims of the junior lienors of the Carlson Annex was adopted by the plan of reorganization as is apparent from the action of the District Court set forth in paragraph 12 of its confirmation order. (R. 15.) In paragraph 11 of the confirmation order the District Court, on the basis of evidence and testimony heard by it on the value of the property of the Debtor, found that the Carlson Annex had a fair market value of $245,025 and that there was no equity over and above the $445,500 principal amount of First Mortgage Bonds outstanding against the property of the Debtor, and that the Debtor was accordingly insolvent.

(R. 15.) In paragraph 12 of its confirmation order, the District Court appraised the junior liens to be of no value. (R. 15.) The so-called destruction of the value of these claims is not due to any action of the District Court, but is due to the fact that they have become valueless from an economic standpoint. It is plain that Section 77B (b) (5) (c) does not require that the holders of these claims be paid in cash or securities, that subdivision only requiring that cash or securities be paid to the holder of a claim that has been appraised at some *value*.

Another provision of Section 77B also makes it clear that these claims need not be provided for in the plan of reorganization. Subdivision (b) (10) of Section 77B provides that

> "No creditor or stockholder shall, for the purposes of this section, be deemed to be affected by any plan of reorganization unless the same shall affect his interests *materially and adversely.*"

Subdivision (b) (5) does not require that "adequate protection for the realization" of their claims by a class of creditors be given if their claims will not be affected by the plan. Since the claims based on the junior lien securities in the instant case have been judicially determined to be of no value, the interests of the holders of such claims are not materially and adversely affected by the plan of reorganization, and, therefore, not being affected by the plan, it is not necessary that the holders thereof receive any cash or any new securities or consent to the plan.

B.

The foregoing contentions have adequate support in lower court decisions as well as in reason.

The opinion in *In re Central Funding Corporation*, 75 F. (2nd) 256 (C. C. A. 2nd, 1935), at pages 259, 260, contains the following significant language:

"A 'reorganization' does not necessarily presuppose

the survival of the rights of stockholders or even of junior creditors, when they have become worthless, but may be a readjustment of the rights of the lienors under a new corporate structure. While this has generally been effected through foreclosure sale, such has not always been the method, and Section 77B was evidently inserted in the Bankruptcy Act in order, among other things, to facilitate corporate readjustments without the delay, complexity, and difficulty inherent in the cumbersome methods that were formerly regarded as necessary.

* * * * * *

"A proceeding for a reorganization may be instituted by the debtor or creditors, as was done here, and a creditors' petition may be filed not only where the corporation 'is unable to meet its debts as they mature,' but also where it 'is insolvent'. Section 77B (a) Bankruptcy Act (11 U. S. C. A., Par. 207 (a)). The language of Section 77B (b) indicates that the reorganization may be had though no equity remains in the corporation."

In re William Penn Garage (D. C. Pa., Oct. 7, 1935, C. C. H., Par. 3649), also involved a case where the court found that the securities of the junior lien creditors were valueless, the face amount of the first mortgage far exceeding the value of the debtor's assets. The Court said:

"It is not necessary that provision be made in the plan for stockholders where the debtor is insolvent as is the fact in this case, nor is it necessary that provision be made for junior lien creditors where the lien of such creditors is of no value."

Similar facts were present in the case of *In Re Witherbee Court Corporation* (D. C. S. D. N. Y. Nov. 21, 1935, C. C. H. Par. 3727), and the opinion recites that "The second mortgagee, unsecured creditors and present stockholders are to receive nothing (under the plan of reorganization)." In considering this aspect of the plan the Court used the following language:

"With the claims of the first mortgage bondholders taken at a present figure of $437,000, it is manifest

that there is no substantial value in the second mortgage, the unsecured claims and the stock. It necessarily follows that any plan which contemplates the issuance of stock for those interests is unfair to the first mortgage bondholders, and by the same token the plan which gives the entire ownership, both bonds and stock, to the bondholders is not unfair to any junior interest. * * * The moment it is proved that the value of the debtor's property is less than the first mortgage, no reorganization can be tolerated that gives an interest to junior parties unless they pay fair value in cash or property."

The facts in *Preble Corporation* v. *Wentworth* (C. C. A. 1st, June 3, 1936, C. C. H. Par. 4048), are different than in the foregoing cases in that here the debtor's plan provided that the first mortgage be paid off at a price less than the face value of the mortgage to the benefit of junior creditors. In disapproving the plan and affirming the District Court, the Court used the following language:

"The debtor is insolvent, and the value of the real estate covered by the mortgages is substantially less than the amount of the outstanding first mortgage bonds, and therefore an attempt to appraise the value of these bonds would be discriminating against this class in favor of another class which could not be considered fair and equitable. To take the property from the mortgagee upon an appraisal is an attempt to use a supposed or possible value, over and above the appraisal, for the benefit of other creditors and stockholders. If there is any such surplus value it belongs to the first mortgagee, up to the amount of his debt. If there is none, there is nothing to build on, and there would seem to be no object in having an appraisal, in the absence of a disclosure of a method of raising the money, unless junior interests are prepared to advance the money on a chance of increased value in the future, and there is no information before the court to that effect."

Subdivision (e) of Section 77, relating to the reorganization of railroads, was amended on August 27, 1935, so as expressly to permit the consummation of a plan of

reorganization of a railroad without the consent of the holders of junior securities and without compensation to them if the Interstate Commerce Commission shall have found, and the Judge shall have affirmed the finding, that the claims of such junior securities are valueless, such provisions of Subdivision (e) being as follows:

> "Provided, That submission to any class of stockholders shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, (a) that at the time of the finding the corporation is insolvent, *or that at time of the finding the equity of such class of stockholders has no value,* or that the plan provides for the payment in cash to such class of stockholders of an amount not less than the value of their equity, if any, or (b) that the interests of such class of stockholders will not be adversely and materially affected by the plan, or (c) that the debtor has pursuant to authorized corporate action accepted the plan and its stockholders are bound by such acceptance: Provided, further, That submission to any class of creditors shall not be necessary if the Commission shall have found, and the judge shall have affirmed the finding, that the interests of such class of creditors will not be adversely and materially affected by the plan, *or that at the time of the finding the interests of such class of creditors have no value,* or that the plan provides for the payment in cash to such class of creditors of an amount not less than the value of their interests."

This Section was construed by District Judge Hincks *In re New York, New Haven and Hartford Railroad Co.,* decided September 15, 1936, U. S. D. C. Conn., reported at paragraph 4172 of Commerce Clearing House Bankruptcy Law Service, in which the Court said in part as follows:

> "For, as observed earlier in this memorandum, under the Act only a plan which is free from confiscatory features may be confirmed. To be sure, under the Act the court may approve a plan 'modifying or altering the rights of creditors generally, or of any class of them, secured or unsecured,' etc. But since only an equitable plan may be approved, the plan must provide that every creditor in the order of his priority shall

receive under the plan rights which in equity are the fair equivalent of such of his rights as have been subjected to equitable modification, at least in so far as the assets of the debtor's estate permit. Any creditor found to be only partially secured is entitled to the equitable equivalent of such security as he has, with a right to share in equality with common creditors for the excess of his claim as allowed above the value of his security as ascertained by equitable considerations. And the plan must recognize the prior right of common creditors with respect to such assets as remain after equitable treatment has been accorded to secured creditors. *Kansas City Ry.* v. *Central Union Trust Co.*, 271 U. S. 445. Such is the intent of the Act; surely the substance of a plan of reorganization conforming to that intent cannot conflict with the Fifth Amendment.

"Out of the numerous reorganization cases in the courts of equity, I have been unable to find one that is inconsistent with the principles expressed above. In most of these cases the power of the court, either with or without judicial sale, to enforce the interchange of securities equivalent in equity, has been assumed. • • • ."

C.

The cases cited by the petitioners are absolutely consistent with the foregoing principles. Four of these cases involve situations where a junior interest is attempting to have the claim of the senior interest reduced by appraisal to the benefit of junior interests.

In *Tennessee Publishing Co.* v. *American National Bank*, 81 Fed. (2d) 463 (C. C. A. 6th) the Court refused to allow the reduction of senior lien claims to the benefit of junior interests.

In *In re Murel Holding Corporation*, 75 Fed. (2nd) 941 (C. C. A. 2nd), an order staying a foreclosure proceeding was reversed when it appeared that the only plan proposed was that of the debtor proposing a ten-year extension of the first mortgage and a release of amortization payments.

The court objected to such a plan and pointed out that 77B (b) (5) requires that " 'adequate protection' (of the claims of a dissenting class) must be completely compensatory."

In *Francisco Building Corporation, Ltd.*, v. *Battson*, 83 Fed. (2nd) 93 (C. C. A. 9th), we again find the court refusing to allow the reduction of senior lien claims to the benefit of junior interests. To the same effect is *Security-First National Bank* v. *Rindge Land & Nav. Co.*, C. C. A. 9th, decided August 17, 1936, and reported at Par. 4144 C. C. H. Bankruptcy Law Service.

Also in *In Re Hotel Charles*, 12 Fed. Supp. 734, 736, (affirmed sub nom. *City of Springfield* v. *Hotel Charles Co.*, C. C. A. 1st, 1936, Par. 4054 C. C. H. Bankruptcy Law Service), the Court answered the contention of a municipality, holding a tax lien of $100,000 against a property assessed at $721,100, that it was being deprived of the full value of its security by the order enjoining its foreclosure suit by pointing out that:

> "If any creditor claims a lien upon the property affected by the plan of reorganization and he does not belong to a class of duly assenting creditors, the plan cannot be confirmed unless it provides adequate protection for the realization by the creditor of the *value* of his interest or lien in or upon the property." (Italics ours.)

Likewise, *Louisville Joint Stock Land Bank* vs. *Radford*, 295 U. S. 555, is in line with the foregoing cases inasmuch as it declared an act unconstitutional which deprived a secured creditor of substantive rights to control his security to the benefit of a junior interest, the debtor. It is believed that the Sixth Circuit, in its decision in the Tennessee Publishing Company case, properly held that Section 77B (b) (5) (c) was unconstitutional if, as that court believed, it authorized a substantial reduction in the rights of a first lienor without consent of the holders of two-thirds thereof. On the other hand, it is well settled that a statute susceptible of

two constructions, one constitutional and one unconstitutional, will not be construed to be invalid.

This doctrine is applicable to this statute, and it is believed that the Sixth Circuit was in error in ignoring the distinction between the two situations which may arise under subdivision (b) (5) of Section 77B. In the first class of cases, the shareholders or the junior creditors, without any equity in the debtor's assets, are seeking to have a plan of reorganization confirmed without the consent of the senior lienors. The facts of the Tennessee Publishing case fall within this class, as do the facts of the Radford case, which is the basis for the Tennessee Publishing Co. decision. However, there is a second situation wherein the senior lienor has proposed, or at least has accepted, a plan to which the consent of two-thirds of certain subordinate classes of creditors cannot be obtained. In this situation, to permit stockholders to override the interest of creditors would involve precisely the sort of unwarranted taking of property which was condemned in the *Radford* case. To permit junior creditors to prevail over senior lienors would be only slightly less obnoxious. See "Reorganization Without Consent of Creditors," 34 Mich. L. Rev. 1201 (1936).

In *Louisville Trust Co.* v. *Louisville N. A. & C. R. Co.*, 174 U. S. 674 and in the line of cases following the Boyd case, this court established the principle that the prior rights of creditors must be respected. In the Louisville Trust Co. case, *supra*, this court stated (page 684):

> "* * the stockholder's interest in the property is subordinate to the rights of creditors; first of secured and then of unsecured creditors. And any arrangement of the parties by which the subordinate rights and interests of the stockholders are attempted to be secured at the expense of the prior rights of either class of creditors comes within judicial denunciation."

In *Kansas City Terminal R. Co.* v. *Central Union Trust Co.*, 271 U. S. 445, this court stated:

> "Unsecured creditors of insolvent corporations are

> entitled to the benefit of *the values which remain after lienholders are satisfied* * *.
>
> * * to the extent of their debts creditors are entitled to priority over stockholders against all the property of an insolvent corporation * *. No offer is fair which does not recognize the prior rights of creditors * *. Whenever assessments are demanded, they must be adjusted *with the purpose of according to the creditor his full right of priority against the corporate assets,* so far as possible in the existing circumstances."

The common principle enunciated in these cases is that the Bankruptcy Act does not authorize a court to compel senior lienors with an equity in a debtor's assets to share the security with junior lienors without an equity in the debtor's assets. To confirm a plan of reorganization providing for the delivery of the property involved therein to or upon the order of the senior lienors where there is no equity over and above the amount of the senior lien does not take away any interest of a junior lienor because the value of the interest of the junior lienor (if it ever existed) has vanished by reason of the shrinkage of the value of the property below the amount of the senior lien.

In the instant case the value of the Carlson Annex has shrunk so far below the principal amount of the First Mortgage Bonds that the First Mortgage Bondholders, recognizing the realities of the situation, have accepted a plan of reorganization which provides for the transfer of the Carlson Annex for a consideration amounting to 55 per cent of the principal amount of the First Mortgage Bonds, wholly disregarding accumulations of interest thereon since January 1, 1931.

It is therefore respectfully submitted that the junior creditors of the Carlson Annex cannot attack the action of the District Court in construing Section 77B as not requiring the creation of an artificial value in their claims inasmuch as the appraisal of the Carlson Annex determined

that it was of substantially less value than the claim of the senior lienor.

D.

Furthermore, this court must decide this case on the assumption that the District Court's appraisal was reasonable, since neither the method of valuation nor the supporting testimony are in the record submitted to this Court.

To summarize the effect of the foregoing Argument, it is our belief that it shows that the District Court properly construed and applied Section 77B (b) (5) (c), that it properly valued the claims of the petitioners and that subdivision (b) (5) (c) of Section 77B is constitutional, unless the deprivation of the right of junior interests, who have no real equity in the Debtor's assets, to have a public judicial sale, to bid at the sale, and to have the right to redeem from the sale, is so substantial a deprivation, even though authorized by Section 77B, of the Bankruptcy Act, as to be forbidden by the Fifth Amendment.

The remainder of our brief will consider the latter question.

II.

THE RIGHTS OF JUNIOR LIENHOLDERS ACQUIRED PRIOR TO THE ENACTMENT OF SECTION 77B, INCLUDING THE RIGHT TO INSIST UPON A PUBLIC, JUDICIAL SALE, THE RIGHT TO BID AT SUCH SALE AND THE RIGHT TO REDEEM WITHIN FIFTEEN MONTHS AFTER SALE (EVEN IF SUCH RIGHTS EXIST) ARE RIGHTS WHICH CAN BE DISREGARDED IN CONSUMMATING A PLAN OF REORGANIZATION UNDER SECTION 77B WITHOUT THE CONSENT OF SUCH JUNIOR LIENHOLDERS IN A CASE WHERE THEIR CLAIMS HAVE NO VALUE, PARTICULARLY WHERE THE CLAIM OF THE SENIOR LIENHOLDER GREATLY EXCEEDS THE VALUE OF THE SECURITY, AS IN THE INSTANT CASE.

A.

Section 77B (a) provides in part:

> "* * * the court * * * may exercise all the powers, not inconsistent with this section, which a federal court would have had it appointed a receiver in equity of the property of the debtor by reason of its inability to pay its debts as they mature."

The pertinent part of subdivision (o) of Section 77B reads:

> "In proceedings under this section and consistent with the provisions thereof, the jurisdiction and powers of the court * * * shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered * * *."

It is therefore apparent that any powers which the bankruptcy or equity courts could exercise can be exercised by the reorganization court if those powers are not inconsistent with 77B. The following consideration of bankruptcy and equity cases is thought to indicate that the power which the Carlson Annex requires the court to assume under authority of Section 77B (b) (5) (c) is a power which could

be exercised by either bankruptcy or equity courts before the enactment of 77B.

1. It is established that the Bankruptcy Court has the power to sell free and clear of liens. *Van Huffel* v. *Harkelrode,* 284 U. S. 225 (1931). However, the *Radford* case is quoted by the petitioners (See page 29 of the petition for certiorari), to the effect that bankruptcy sales, free and clear of liens, cannot be made "to the prejudice of the lienor in the interest of either the debtor or other creditors." In answer to this, it may be said that the sale in the Carlson Annex case is for the benefit of the first lienor and is not prejudicial to junior liens, since the property is worth only 55 per cent of the first mortgage indebtedness. It is true that sales in bankruptcy have not often been approved if it appears that the amount of the encumbrance exceeds the value of the property. However, this is because prior to the enactment of the reorganization sections of the Bankruptcy Act unsecured creditors were the particular concern of the Bankruptcy Court, and because the question of who should pay certain costs of bankruptcy administration is sometimes embarrassing if there is no surplus over the claims of lienholders. See *Kimmel* v. *Crocker,* 72 F. (2nd) 599 (C. C. A. 10th, 1934); *In Re Cogley,* 107 Fed. 73, (D. C. Iowa, 1901), and *Bonner* v. *Cannon,* 60 F. (2nd) 228 (C. C. A. 10th, 1932). These cases are inapplicable to a reorganization proceeding under Section 77B whose primary concern is the creation of a financially sound business concern rather than the unsecured creditor.

2. Petitioners object to a private sale based on an appraised valuation which is not large enough to provide any proceeds in which junior creditors may share.

However, it is established:

(a) That a bankruptcy court has the power to make private sales. *In re Edes,* 135 Fed. 595 (D. C. Me., 1905); *In re Nevada-Utah Mines & Smelter Corpora-*

tion, 202 Fed. 126 (C. C. A. 2nd, 1913); General Order 18 (2); and that

(b) The power to sell at appraised valuations has been assumed by the equity court in receiverships.

In *Daniel* v. *Layton,* 75 F. (2nd) 135 (C. C. A. 7th, 1935), the court said that "in determining fairness the court may, in cases like the instant one, accept appraisal values instead of resorting to liquidation through sales, etc." The court in the last mentioned case cited *Coriell* v. *Morris White, Inc.,* 54 F. (2nd) 255 (C. C. A. 2nd, 1931), but went on to say, "Even in the absence of precedent, we think such a plan must meet approval. The contentions of one creditor must be considered in the light of their effect on other creditors." The Supreme Court reversed the lower court's decision in the Coriell case in an opinion reported in 289 U. S. 426, but did not condemn a sale at an appraised valuation *per se,* only objecting to the procedure adopted by which the valuation was to be obtained.

Section 77B (c) (2) provides, in part, that:

"every such trustee * * * shall * * * exercise, * * *, all the powers of a trustee appointed pursuant to section 44 of this Act, and if authorized by the judge, the same powers as those exercised by a receiver in equity * * *."

In *In Re Finco Dye and Print Works, Inc.* (D. C. N. Y., June 24, 1936, C. C. H. Bankruptcy Law Service, Par. 4128), a trustee in a 77B proceeding was empowered to make a private sale of the Debtor's real estate where it appeared that the price was adequate. The court said:

"The Court has been unable to find any case wherein comment upon this precise point was made. The case of *In re Allied Owners Corporation,* 4 F. Supp. 684 (1935), justifies the conclusion that in the absence of opposing authority or specific prohibition in the statute, the powers exercised by a receiver in equity and conferred upon trustees under Section 77B (c) (2) are sufficient to permit this court to grant the instant application."

Under Section 77B (a) the Bankruptcy Court, itself, would have the same power.

Clause 5 of Section 77B (b) provides that a class of creditors may have their claims adequately protected "by a sale free of such interests, claims, or liens, at not less than a fair upset price." If there were a sale free and clear of liens in the instant case, the first mortgage bondholders would undoubtedly receive all the net proceeds since their claims far exceed the value of the Debtor's assets.

A further argument which lessens the force of a constitutional attack on the power of the court to sell at an appraisal figure is the long custom of equity courts to fix upset prices. It is well known that the bid seldom materially exceeds the upset price, and there is no reason why appraisal figures would not average as high as upset prices, since too low an appraisal figure would indicate an abuse of discretion just as would too low an upset price. The only difference between the two bases for selling corporate properties is that the upset price is accompanied by a public sale. It is difficult to understand why the absence of the mere formality of a public sale invalidates a sale at an appraised valuation, particularly when it would always be possible for the first mortgage bondholders committee to outbid the junior lienors, through the use of the deposited bonds in making payment of the bid price. As this court stated i *Northern Pacific Railway* v. *Boyd*, 228 U. S. 482, as against creditors, such a sale is "a mere form." Practically it has proven impossible to sell large properties of the character here involved for cash because the large amount of cash required by the upset price renders the bondholders committee, which ordinarily controls a large amount of the outstanding securities, practically the only bidder. (See *First National Bank* v. *Flershem*, 290 U. S. 504 (1934) and *Kansas City Terminal R. Co.* v. *Central Union Trust Co.*, 271 U. S. 445, 455).

Furthermore, the upset price is not often large enough to provide cash for any other dissenters than those found in the ranks of the first mortgage bondholders. Generally all junior interests have had to take either nothing or a minor participation, often based on a cash assessment. Attacks on the upset price reorganization have been confined chiefly to attacks on the upset price by dissenting first mortgage bondholders and to attacks alleging violation of the "fixed principle" of the *Boyd* case (*Northern Pacific R. Co.* v. *Boyd*, 228 U. S. 482). It would seem that "appraisal" reorganizations under Section 77B should only be subject to similar attacks.

Consequently it is believed that the transfer of the Carlson Annex Building to the 636 Church Street Building Corporation at an appraised valuation should be upheld, since this Court cannot go into the question of the adequacy of the valuation on the record submitted to it and should therefore assume that the valuation was proper.

3. Petitioners also contend that the confirmed plan of reorganization is unconstitutional in that it deprives them of their right, or supposed right, to have the value of their respective equities determined by a public judicial sale.

On September 15, 1936, District Judge Hincks, in *In Re New York, New Haven & Hartford R. R. Co., supra*, considered in detail this question, and we are taking the liberty of setting forth excerpts from his opinion, as related to this subject, as Appendix "A".

4. Another constitutional objection to the plan confirmed by the District Court is that junior interests have their equity of redemption cut off. Nevertheless, under the decisions, the rule seems to be that state redemption statutes do not apply to sales by a receiver or trustee holding property in equity receiverships.

In *Blair* v. *Illinois Steel Co.*, 159 Ill. 350, 363, 42 N. E. 895

(1896), there was a proceeding to administer a debtor's assets and dissolve the corporation under the Illinois State dissolution statute. The decree for a sale free of the equity of redemption was held to be proper, because the sale did not come within the state redemption statute which applied to sales "by virtue of an execution, judgment or decree of foreclosure of mortgage or enforcement of mechanics' or vendors' liens or for the payment of money". The property of the Carlson Annex is located in Illinois, and the power of the Federal Court proceeding under Section 77B of the bankruptcy law would seem to be no less than that of an Illinois state court proceeding under a state dissolution statute.

Likewise, in *American Mine Equipment Co.* v. *Illinois Coal Corporation*, 31 F. (2nd) 507 (C. C. A. 7th, 1929), and *Beet Growers' Sugar Co.* v. *Columbia Trust Co.*, 3 F. (2nd) 755 (C. C. A. 9th, 1925), equity receivers were authorized to make sales free of the right of redemption, the court interpreting the state redemption statute there involved as not applying to sales by a trustee or receiver in a proceeding instituted for the benefit of creditors.

The remaining question is whether the statute also fails to cover sales in a 77B proceeding. If the Illinois statute applies to such sales, it is because a sale in a 77B proceeding is a sale on an execution, judgment, decree of foreclosure of mortgage, or a sale for the payment of money. Since the statute is in derogation of the common law, it is to be strictly construed. Whether or not a sale pursuant to a 77B proceeding falls within any of those statutory categories depends upon a determination of the basic purpose of the sale. Its basic purpose does not seem to be the satisfaction of a judgment, execution, foreclosure decree, or to obtain the payment of money. Rather, its basic purpose is to provide a means by which a corporate property may be promptly reorganized so that it may continue to do

business for the benefit of employees, the public, and any of its creditors who may have an equity in its assets. It is therefore submitted that a sale pursuant to a 77B proceeding is not subject to the redemption statute of the State of Illinois.

B.

In conclusion, it is to be noted that the right of redemption is not such an interest in land that it can be administered under Section 75 (s) of the Bankruptcy Act. (*In re Borgelt*, 79 F. (2nd) 929 (1935)), and it seems improbable that a junior lienor, whose security is of much less value than the claim of the senior lienor, has such a substantial property interest in the right to a public, judicial sale, the right to bid at the sale, and the right to redeem, that the loss of this right, under the sanction of the bankruptcy power, amounts to a violation of the Fifth Amendment.

The petitioners attempt to support the right of redemption as a substantial property interest by citing cases where the right has been recognized by state and federal courts, but none of these cases involves a situation where the state statute is in conflict with a power asserted by a federal bankruptcy court except the *Radford* case.

We will not repeat our argument that the *Radford* case is not in conflict with the power assumed by the District Court.

The quotation from *In re Georgian Hotel Corporation*, 82 F. (2d) 917 (Petitioners' Brief, page 34), to the effect that the right to redeem might have been of value to the subordinate creditors of the debtor, was preceded by the following statement of the Court:

> "As to allotment of 30 per cent of the stock to the subordinate creditors, we believe that this was fairly within the judicial discretion of the District Court."

Plainly, the opinion of the court did not recognize that the right of subordinate creditors to redeem should be observed, but only that it might be. Because a court *may* create an artificial equity for junior lienholders does not mean that if it does not create such an equity it is proceeding in an unconstitutional manner.

The act of confirming a plan of reorganization is certainly no more drastic than the act of approving a discharge, and therefore the following quotation from *Hanover National Bank* v. *Moyses*, 186 U. S. 181 (1902), seems pertinent:

> "Congress may prescribe any regulations concerning discharge in bankruptcy that are not so grossly unreasonable as to be incompatible with fundamental law, and we cannot find anything in this act on that subject which would justify us in overthrowing its action."

C.

It is axiomatic that the courts of the United States in working out plans for reorganization under 77B, will protect and preserve any right which any litigant possesses under the laws of the state where the proceedings occur.

At the threshold of this controversy, therefore, arises the instant question—what are the rights of these second and third lien noteholders under Illinois law, and what rights of redemption have they which were necessary to be protected under the reorganization plan?

The right that is alleged by the petition is the right of redemption under the Illinois statutes.

Chapter 77, Section 16 of the Illinois Statutes—Smith-Hurd Revised Statutes, 1935, provides:

> "*When any real estate is sold by virtue of an execution, judgment, or decree of foreclosure of mortgage, or enforcement of mechanic's lien, or vendor's lien, or for the payment of money,* it shall be the duty of the sheriff, master in chancery or other officer, except as

otherwise in this act provided, instead of executing a deed for the premises sold, to give to the purchaser a certificate describing the premises purchased by him, showing the amount paid therefor, or if purchased by the person in whose favor the execution is taken or the decree is entered, the amount of his bid, the time when the purchaser will be entitled to a deed, unless the premises shall be redeemed, as provided in this Act."

It is provided by Section 18:

"*Any defendant*, his heirs, executors, administrators, assigns, or any person interested in the premises, through or under the defendant may * * * within twelve months from said sale, redeem the real estate so sold * * *."

It is also provided by Section 20:

"If such redemption is not made, *any decree or judgment creditor*, his heirs, executors, administrators or assigns may, after the expiration of twelve months and within fifteen months after the sale, and when any sale is had under any order or decree of foreclosure upon a mortgage or trust deed * * * redeem the premises * * *."

Complete copy of said Sections 16, 18 and 20 is attached as Appendix B.

The assignment of error does not claim that the Debtor itself, or the stockholders of the Debtor, had any right of redemption at the time of the entry of the order by the District Court approving the plan of reorganization.

The only other persons under Illinois law who have any right of redemption are "*any defendant*" and a "*decree or judgment creditor*".

It is not alleged in the petition that the second and third mortgage noteholders were "*decree or judgment creditors*". In fact the contrary appears—they were mere lienors, who had not reduced their claims to "decree or judgment" against the Debtor and, under Illinois law, are not persons who now possess any right of redemption.

Furthermore, it appears that originally the Trustee under the Trust Deed securing the first mortgage bonds,

commenced in an Illinois court, a suit for foreclosure, to which the Debtor was necessarily a party defendant. While that suit was pending, *the Debtor itself, by its voluntary petition brought the whole controversy into the District Court of the United States under a 77B petition.*

By that act, it subjected itself and all those who claimed under it, *and all its property,* including its right of redemption, if any, to the District Court, which under bankruptcy law has all the powers of a court of equity, and asked that court to ascertain who were its creditors, to ascertain their respective claims and rights, and to devote all its property, by way of reorganization, to a satisfaction of their respective rights.

Subsequently, *and also of their own volition,* the holders of the second and third mortgage notes, who are the petitioners, and whose rights of redemption are alleged to have been violated, voluntarily appeared in the 77B proceedings, and subjected themselves *and their claims* to the jurisdiction of the bankruptcy court, and thereafter took an active and militant part in the proceedings thereof.

They besought the court to formulate some plan of reorganization, actively assisted in that formulation, and continued active until after the court had approved a plan. Under these circumstances, it is contended by these respondents: *first,* that the second and third mortgage noteholders, concerning whose rights the errors are alleged, were never and are not now the owners of any right of redemption under the Illinois Statutes; and *second,* that if they ever possessed any right of redemption, they waived the same and placed it at the Court's disposal, by their voluntary appearance and participation in the proceedings of the District Court in the Bankruptcy proceedings.

It is likewise contended that the Debtor itself and its stockholders never possessed any right of redemption under Illinois law as to anything *except a sale under a foreclosure,* and that that right was waived by their voluntarily

abandoning the Illinois state tribunal, and voluntarily subjecting all and singular any and all rights they had to the disposition of the District Court of the United States in the Bankruptcy proceedings.

These principles have been firmly imbedded in the law beginning with the case of *Blair* v. *Illinois Steel Company*, 159 Illinois 350, 42 N. E. 895, which is the law in Illinois and has never been overruled, modified or even criticized.

Furthermore, that principle, as stated in *Blair* v. *Illinois Steel Company*, was specifically approved and ratified in an extended discussion by the United States Circuit Court of Appeals, Seventh Circuit, in the case of *American Mine Equipment Company* v. *Illinois Coal Corporation*, 31 Fed. (2d) 507, 510 *et seq.*

These two cases dealt with the right of redemption under the Illinois law, and held that when one, who has a right of redemption in the Illinois court under a foreclosure proceeding, *voluntarily consents that the subject matter be taken by a court of equity in a general receivership suit, or invokes that jurisdiction by his own specific acts, he thereby waives the right of redemption, or what is the same thing, subjects it to the jurisdiction of the equity court, and that court in its plenary power has the right to dispose of the real estate free and clear of the right of redemption.*

The Blair case was again reviewed, and after extended discussion, fully ratified and approved, as to the principle here announced, in *Beet Growers Sugar Company* v. *Columbia Trust Company*, 3 Fed. (2d) 755-57.

It is axiomatic that the United States District Court in a Bankruptcy proceeding under 77B possesses all the power which a court of equity has under a general creditor's bill.

If, therefore, the holders of the second and third mortgage notes were in fact *"decree or judgment creditors"*

(which they are not) and if they had ever possessed a right to redeem as such or as *any defendant*, that right was waived by them when they abandoned the Illinois state jurisdiction in which their claims were originally involved, and invoked the powers of the bankruptcy court, submitted themselves to its jurisdiction, and actively participated in the suit there pending.

It is also obvious that when these second and third mortgage noteholders, who were mere lienors and not "decree or judgment creditors", abandoned whatever right to redemption they may have possessed in the Illinois court, they necessarily also abandoned and waived the right to a sale and the right to bid at it.

The Statute Law of Illinois does not specifically require a sale, in a general equity suit. It is contended by petitioner that the Illinois Statute inferentially recognizes that a sale will take place in a foreclosure suit. Even if that position were sound, it is fully answered by the fact that this proceeding, into which petitioners *voluntarily* came, is *not* a foreclosure suit, but is the equivalent of a general equity suit to wind up corporate affairs.

Under the Illinois Statute no right to *redeem* exists in anyone, unless there is a sale, under foreclosure or judgment. Here there was none. If there *is* such sale, then *any defendant* has a primary and a creditor, *who has obtained a judgment or decree,* has a secondary, or alternative right to redeem. These noteholders were mere lienholders, not judgment creditors. No Illinois statute gives a junior lienor, *as such,* the right to redeem from any sale, in any court.

It may be here assumed that the right to redeem from a foreclosure sale is, under Illinois law, a property right in anyone who possesses the right to redeem. It is equally obvious that if there is no right to redeem, because (1) it never existed in these second and third mortgage noteholders, and (2) that if it ever existed, it was waived by

them, then the right to a sale and the right to bid necessarily fall with the right of redemption.

The right itself exists only as to a sale under foreclosure, etc., and if there is no such sale, then obviously none of these rights have any existence.

Furthermore, there is nothing in the fragmentary record before this court, nor in the order of the District Court, confirming the plan of reorganization which indicate whether the plan contemplates a sale, or whether it does not. It is alleged by the brief of petitioner that no sale was provided for, but there is nothing before this court other than the bare assertion of petitioner's brief on which to predicate that asserted fact.

The contention of the petitioner then amounts to this—that although the debtor and the junior lienors, affirmatively brought *all* the property, and *all* their claims against it, into the bankruptcy court, which was clothed with all the powers of an equity court, and asked that court under 77B to marshal and apportion the property and the debts; and although it developed from the evidence, and the court made a specific finding that all the property thus submitted to it was of a value of only 55 per cent of the First Mortgage claims, *yet* no plan can be approved by the court until the junior lienors and the debtor and its stockholders, who had no pecuniary interest in the subject matter, and who had waived any possible right they might have had to redeem, must first approve the plan. Such a contention leads to an absurd conclusion. In that situation no plan could ever be approved without junior interests, whose interests were not materially or adversely affected, specifically voted to approve the plan.

Indeed, under the situation here presented inadequate as that presentation is, the court of equity would have been derelict in its duty and would have prejudicially affected

the rights of the first mortgage bondholders, if it had awarded any portion of the insolvent estate to these junior claims.

All of which is respectfully submitted.

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APPENDIX A.

Excerpts from opinion of Judge Hincks In re New York, New Haven and Hartford R. R. Co. (U. S. D. C. Conn. Decided September 15, 1936), reported at Par. 4172, Commerce Clearing House, Bankruptcy Law Service.

"We are left then only with the question whether the challenged provision is unconstitutional in that it deprives creditors of a right, or supposed right, to have the value of their respective equities determined by a public judicial sale. In answering this question, it will be helpful to consider whether a court of general equity jurisdiction has power in a proper case by decree, without a judicial sale, to approve and enforce a plan of corporate reorganization.

"This important question, the Supreme Court seems never to have decided. See *First National Bank* v. *Flershem,* 290 U. S. 504, note 7 beginning on page 515. But in *Phipps, et al.* v. *Chicago, R. I. & P. Railway Co.,* 284 Fed. 945, in a carefully reasoned decision it was held that even without the aid of an enabling statute the court of equity had plenary power without a judicial sale to approve and enforce a plan of reorganization. To be sure, the value of that decision as a precedent is somewhat weakened by the fact that after certiorari had been granted (261 U. S. 611), it was thereafter dismissed by stipulation between the parties. (262 U. S. 762.) However, the doctrine has been persistently reaffirmed in the Eighth Circuit. *Royal Union Life Ins. Co.* v. *Gross,* 76 Fed. (2nd) 219; *Warner Brothers Pictures, Inc.* v. *Lawton-Byrne-Bruner Ins. A. Co.,* 79 Fed. (2nd) 804. In effect, I think, the case of *Coriell* v. *Morris White, Inc.,* 54 Fed. (2nd) 255, in the Second Circuit lends support to that conclusion. In that case the District Court had approved a plan of reorganization which was effective to put the assets of the corporate defendant into the new corporation wholly owned by the defendant's stockholders, although under the plan unsecured creditors had been offered in payment of their claims only 80 per cent of the par value thereof in preferred stock and 20 per

cent in deferred notes. Under the plan, the transfer was accomplished on order of court without public sale or competitive bids. Under these circumstances it was held that an objecting creditor could not be compelled to accept what was offered under the plan 'without being afforded the alternative of receiving his proportionate share of the proceeds of the conventional sale of the property in cash.' Thus plainly the court viewed a judicial sale in reorganization proceedings as a mere convention, and emphasized that view by holding that the defect in the plan just noted might be cured and the objecting creditors fully protected by an appraisal of their claims by a master who should ascertain 'the value of the assets as if sold at a public sale,' and on that basis ascertain the 'sum of money that would have been realized had a sale taken place' and award to objecting creditors 'their aliquot share of the assets' in cash on that basis. Thus the holding, essentially as in the cases cited from the Eighth Circuit, was to the effect that a judicial sale may be dispensed with, provided some other arrangement is substituted which guarantees objecting creditors a judicial hearing on the fairness of their treatment under the plan.

"This decision, to be sure, was reversed in *National Surety Co.* v. *Coriell*, 289 U. S. 426. But the Supreme Court, in reversing the decision, was careful to base its decision not at all upon the proposition that a judicial sale is a prerequisite to a valid reorganization. As to this, it said only: 'the non-assenting creditors were entitled to have the plan and their objections considered in an orderly way, and to a decree based on adequate data.' It was pointed out that the District Court had undertaken 'to pass upon the wisdom and fairness of the plan of reorganization and the rights of non-assenting creditors.' It was ordered that the decree of the District Court be vacated, not because the court was without equitable power to pass upon such questions, but because 'for the proper disposition of these questions, definite, detailed, and authentic information was essential. Such information was wholly lacking' in the record of that case. Accurate and complete data, it was said, 'might have influenced the court in deciding whether the plan *should be approved or should be approved only upon a public sale.* The

failure to require relevant data before deciding whether the plan should be approved was not cured by the declaration of the Circuit Court of Appeals that the dissenting creditors were entitled to an aliquot share of what, a year later, it was estimated the property would have brought at a public sale, and authorizing them to recover that amount, if assets to satisfy their claims were then available.' The ruling thus proceeds not on the proposition that a judicial sale is a prerequisite to reorganization in equity, but rather upon the theory that an appraisal made over a year after the plan was approved subjected objecting creditors to the hazard of loss resulting from operations in the meantime. See *First National Bank* v. *Flershem, supra.* 290 U. S., note 8, on page 516.

"And the Flershem case, just referred to, contains a similar implication. There, too, the District Court was reversed and the case remanded not upon a mandate again to offer the corporate assets upon a judicial sale at a corrected upset price, but rather 'for the purpose of ascertaining the sum' which the appellant creditor 'would have received if the property had been sold at a proper price.' Clearly the decision contemplated that the ascertainment would be accomplished through the process of a judicial hearing, but that the required ascertainment when once accomplished had to be translated into a revised upset price and followed by the elaborate and costly procedure of a judicial sale, is not intimated.

"To be sure, in all the cases discussed above the rights of unsecured creditors only were directly in issue. And the contention is here made, largely in reliance upon the doctrine of *Louisville Bank* v. *Radford,* 295 U. S. 555, that the right of a secured creditor to realize upon his security by a judicial sale is a substantive right of property guaranteed by the Fifth Amendment.

"The contention, however, attributes to the Radford decision a scope broader than warranted by the facts of the case or by the language of the opinion. Neither in word nor in effect did the court there hold that a mortgagee's right to a judicial sale was a right of property beyond the power of equitable modification. On the contrary, the court remarked (page 597) upon the power of equity to permit a receivership to continue

'to prevent a sacrifice of the creditor's interest.' The modification imposed by the Frazier-Lemke Act there under consideration was held to be confiscatory because designed to promote the interests of the mortgagor at the expense of the mortgagee.

"The contention, moreover, rests upon inverted reasoning. For let it be granted that the right of a mortgagee to a judicial sale is a property right under the local law. Nevertheless, if a judicial sale is found to be inadequate fully to protect the mortgagee's right, under a familiar principle equity may interpose to prevent a sacrifice thereof. And it is in the discharge of this responsibility that courts of equity have developed the device of an upset price. Thus in cases in which, due to the size or spread or character of the property which is the subject-matter of the sale, a public offering may not reasonably be expected to realize any bids whatever commensurate to the value of the property, the chancellor errs if he fails to protect the mortgagee by an adequate upset price. *First National Bank* v. *Flershem, supra.*

"In such a case, the bare legal right of the mortgagee to a judicial sale is superseded not by the confiscation of the unavailing right that was his, but rather by the more effective process of equity which assures to the mortgagee the essential substance of his right. In no sense can the addition of the equitable remedy be deemed to impair the effect of the creditor's contract. *National Surety Co.* v. *Architectural Decorating Co.*, 226 U. S. 276; *Water Works Co.* v. *Oshkosh*, 187 U. S. 437; *Bernheimer* v. *Converse*, 206 U. S. 516. When thus viewed in its true perspective, the equitable power is seen to be not a species of confiscation but the very antithesis thereof.

"Especially is this conclusion applicable in proceedings for the reorganization of a railroad. For under the law of the land, railroad properties are not subject-matter for unrestricted bargain and sale. Thus, under the Interstate Commerce Act, as amended, especially by the Act of June 16, 1933, 48 Stat. 217, 49 U. S. C. A. Section 5, the purchase or other acquisition of railroad property subject to the Interstate Commerce Act has been subjected to the regulation of the Interstate Commerce Commission. And in determining whether or not a given purchase shall be authorized, it is the func-

tion of the Commission not to boost the purchase price for the benefit of those having private rights in the property, but to determine whether the purchase 'will promote the public interest' and 'will be in harmony with and in furtherance of the plan for the consolidation of railway properties established' or to be established by it pursuant to said Act. Moreover, unless the prospective purchaser has sufficient ready cash to consummate the acquisition, under Section 439 of the Transportation Act of 1920, 49 U. S. C. A. 20a it can make good its bid only if the Commission approves its corporate financing undertaken to that end. Plainly, a judicial sale of such property, even though the sale be public in form, will not give free play to the process of competitive bidding. It follows that one having a lien upon railroad property is in a particularly unfavorable position to claim that the interposition of the beneficent powers of equity have 'deprived' him of anything of value.

"In reorganization proceedings, the distinction between public utilities and other corporations or individuals seems to have been recognized, if not directly adjudicated, by the Supreme Court. *First National Bank* v. *Flershem*, 290 U. S., note 7 beginning at page 515; *Continental Bank* v. *Rock Island R. R.* 294 U. S. 648; *Kansas City Rwy.* v. *Central Union Trust Co.*, 271 U. S. at page 455. The distinction may further serve to differentiate the Radford case having to do with the disposition of farm property from a proceeding for the reorganization of a railroad.

"From the foregoing considerations I incline to the view that a District Court of the United States in a proper case may in the exercise of its inherent equity powers approve and enforce a plan of reorganization for a railroad without resort to the fiction of a judicial sale. That being so, it follows that the provision of subdivision (e) now under attack serves merely to confer upon the District Court in its bankruptcy part a power theretofore existing in its equity part. It is too late now to question the power of Congress to confer equity powers upon the bankruptcy court, and I hold the questioned provision to be valid and constitutional."

APPENDIX B.

(Being Sections 16, 18 and 20 of Chap. 77, Ill. St. Bar Stats. 1935.)

"16. *Certificate of sale.* When any real estate is sold by virtue of an execution, judgment, or decree of foreclosure of mortgage, or enforcement of mechanic's lien, or vendor's lien, or for the payment of money, it shall be the duty of the sheriff, master in chancery or other officer, except as otherwise in this Act provided, instead of executing a deed for the premises sold, to give to the purchaser a certificate describing the premises purchased by him, showing the amount paid therefor, or if purchased by the person in whose favor the execution is taken or decree is entered, the amount of his bid, the time when the purchaser will be entitled to a deed, unless the premises shall be redeemed, as provided in this Act."

* * * * * *

"18. *Redemption by defendant or his privies.* Any defendant, his heirs, executors, administrators, assigns, or any person interested in the premises, through or under the defendant, may, except as to any sale had by virtue of decree of foreclosure of mortgage made by a corporation wherein right of redemption shall be waived, as in section 18a of this Act provided, within twelve months from said sale, redeem the real estate so sold by paying to the purchaser thereof, his executors, administrators or assigns or to the sheriff or master in chancery, or other officer who sold the same, or his successor in office, for the benefit of such purchaser, his executors, administrators, or assigns, the sum of money for which the premises were sold or bid off, with interest thereon at the rate of six per centum per annum from the time of such sale, whereupon such sale and certificate shall be null and void."

* * * * * *

"20. *Redemption by creditor.* If such redemption is not made, any decree or judgment creditor, his heirs, executors, administrators or assigns may, after the expiration of twelve months and within fifteen months after the sale, and when any sale is had under any order or decree of foreclosure upon a mortgage or trust deed executed by a corporation and containing a waiver of the right of redemp-

tion any decree or judgment creditor of such corporation may within three months after the sale, redeem the premises in the following manner: Such creditor, so entitled to redeem, his heirs, executors, administrators or assigns may sue out an execution upon his judgment or decree, and place the same in the hands of the sheriff or other proper officer to execute the same, who shall endorse upon the back thereof a levy of the premises desired to be redeemed; and the person so entitled and desiring to make such redemption shall pay to such officer the amount for which the premises to be redeemed were sold, with interest thereon at the rate of six per centum per annum from the date of the sale, for the use of the purchaser of such premises, his executors, administrators or assigns, whereupon such officer shall make and file in the office of the recorder of the county in which the premises are situated a certificate of such redemption, and shall advertise and offer the premises for sale under said execution as in other cases of sale or execution."